



# JUDICIAL BRANCH COVID-19 TASK FORCE MEETING

May 5, 2020

Task Force Co Chair, the Honorable Jay Corpening, convened the meeting at 2:00 p.m. by WebEx. Judge Bridges stated that the meeting is subject to North Carolina's open meetings laws and that a livestream had been made available to the public and members of the media.

NCAOC Research and Planning Associate Emily Mehta took roll call. The following Task Force members were present via WebEx:

- The Honorable Forrest Donald Bridges, Co-Chair, District 27B Senior Resident Superior Court Judge.
- The Honorable Jay Corpening, Co-Chair, District 5 Chief District Court Judge.
- The Honorable Wayland Sermons, District 2 Senior Resident Superior Court Judge.
- The Honorable Teresa Vincent, District 18 Chief District Court Judge.
- The Honorable Billy West, District 14 District Attorney.
- The Honorable Robert Evans, District 8 District Attorney.
- The Honorable Marsha Johnson, Harnett County Clerk of Superior Court.
- The Honorable Elisa Chinn-Gary, Mecklenburg County Clerk of Superior Court.
- Kinsley Craig, District 27B Trial Court Coordinator.
- Kellie Myers, District 10 Trial Court Administrator.
- Jason Cheek, Davidson County Magistrate.
- The Honorable Jennifer Harjo, New Hanover County Public Defender.
- John McCabe, Attorney and Appointee of the North Carolina Advocates for Justice (NCAJ).
- Wade Harrison, Attorney and Appointee of the North Carolina Bar Association (NCBA).
- Patrick Weede, Attorney and Appointee of the NCBA.
- JD Keister, Attorney and Appointee of the North Carolina Association of Defense Attorneys (NCADA).

Anna Stearns, Chief of Staff and General Counsel to Chief Justice Cheri Beasley, was present via WebEx. A number of additional people joined the WebEx as representatives of the North Carolina Administrative Office of the Courts (NCAOC), the Office of Indigent Defense Services (IDS), and the School of Government (SOG) in their capacity as advisers and staff to the Task Force.

## **Approval of May 1, 2020 Task Force Meeting Minutes**

The proposed minutes of the May 1, 2020 Task Force meeting were approved by roll call vote, with a correction to Trial Court Administrator Myers' title.





### **Recommendations for Additional Extension of June 1, 2020 Deadline**

Judge Bridges said he appreciates the written comments that some members submitted on behalf of their constituents in a very short time frame, and noted that the Task Force will discuss them and receive additional verbal reports from members. Judge Bridges said one of the most pressing aspects of the Task Force's mission is to generate recommendations for the Chief Justice about additional deadline extensions and emergency directives. Judge Bridges added that all filings and acts that were required to be done between March 16, 2020 and June 1, 2020 are now all due on June 1, 2020 unless that deadline is otherwise extended. Judge Bridges asked whether the Task Force thinks there should be further deadline extensions beyond June 1. If so, he asked on what date or dates the new deadlines should fall, and whether they should be in the form of a specific hard date for all previously extended deadlines, a series of rolling deadlines, or some combination thereof.

Judge Bridges said he noted several recurring themes in the written comments various groups submitted about further extensions. First, whatever the Chief Justice does needs to be clear and minimize confusion for practitioners and litigants. Second, some clerks have expressed concerns that one hard deadline for all filings would result in an unwieldy number of filings on or about that one date. Third, we need to remind all practitioners and litigants that, even if there is one hard deadline, that is not the only date on which filings may occur; the courts are open and filings and acts can and should be submitted and done as soon as possible. Fourth, with some exceptions such as statutes of limitations (SOLs), local judges still retain authority and discretion to grant additional extensions.

Judge Bridges said written comments were submitted by the Conference of District Attorneys, the public defender representative, and family, civil, and criminal law practitioners. Those comments addressed both the deadline extensions and public safety concerns, but this discussion would be focused on the former. Attorney Weede said he submitted comments on behalf of the criminal defense bar, which wants directives that are consistent across the state and prefers one deadline for all filings related to criminal cases, rather than rolling deadlines. Attorney Weede said criminal defense attorneys are concerned about in-custody defendants and the difficulties in meeting with them over the past few months, adding that investigators have also been unable to do their work in the field. Attorney Weede suggested that extending all criminal deadlines by 60 days (until July 31<sup>st</sup>) would likely allow enough time to resume jail visits and case investigations. Public Defender Harjo said she heard similar concerns from the public defenders and private attorneys in her area. She added that attorneys who practice in multiple areas of the law suggested it might be helpful to have variable deadlines in the different areas.

Judge Bridges asked what Attorney Weede and Public Defender Harjo consider to be the significant categories of filings from the standpoint of defense attorneys, and whether filing pretrial motions and notices of affirmative defenses and responding to reciprocal discovery are good examples. Attorney Weede and Public Defender Harjo agreed those are the appropriate types of categories. They added that acts to be done, including obligations of clients such as paying fees and costs and completing community service, should be considered as well.





Judge Bridges asked the district attorneys on the Task Force for their thoughts on extensions of filing deadlines and acts to be done. District Attorney Evans said he agrees with the defense attorneys that there will be some need for flexibility with respect to acts to be done and suggested that those deadlines might need to be rolling. As for filings, District Attorney Evans said, even if the Chief Justice sets a hard deadline, most dispositive criminal filings allow for the presiding judges to grant additional relief. District Attorney West agreed and said the district attorneys' discussions have been more focused on resuming grand juries and jury trials, and the Conference of District Attorneys' written comments suggest allowing grand juries to resume on June 1 and allowing trials to be calendared starting August 3, 2020. He does not believe there would be opposition to extending filing deadlines.

Judge Bridges asked Attorney Harrison to discuss the recommendations from family law practitioners. Attorney Harrison said one area of concern is the impact of the blanket extensions on the ability to submit discovery responses and responsive pleadings, and to get absolute divorce judgments. Attorney Harrison said that, in turn, can cause complications like children being born out of the right wedlock and problems with insurance and the division of retirement plans. Attorney Harrison said the family bar does not believe the Chief Justice needs to order additional blanket extensions and thinks local judges can ameliorate any unfairness that may result from strictly enforcing deadlines. Attorney Harrison said practitioners in other areas of the law, such as criminal defense, may need extensions, but the family bar believes that family law matters do not require any additional extension.

Judge Bridges noted that the Chief Justice's most recent directive includes revised language about the need for the parties to consent to remote hearings, and judges may now require remote hearings unless a party objects for good cause. Judge Bridges asked whether that change will help allow more family law matters to proceed even if the filing deadlines are extended. Attorney Harrison said that will help with hearings but, if all discovery deadlines are extended, practitioners still cannot make progress toward trials. Attorney Harrison said blanket extensions do not fit well in family law cases, and he thinks the Chief Justice should carve out family law from any further extensions to allow parties to move forward with pleadings and discovery, reiterating that presiding judges will have the ability to address individual instances of unfairness.

Judge Bridges asked Attorney Harrison about a starting point for how the Chief Justice's next order might carve out different treatment for family law cases. Attorney Harrison said there are a finite number of family law matters and filings—such as absolute divorce, responsive pleadings to alimony and equitable distribution, child custody and support, and discovery deadlines—that could be carved out as exceptions to an additional extension order. Judge Vincent said she would be happy to consult with Attorney Harrison on how best to do that.

Judge Corpening said the family law attorneys in his district appear to feel the same sense of urgency to get these cases moving again, and they have echoed Attorney Harrison's view that there should not be an additional blanket extension of time. Judge Corpening said he solicited the views of the district court judges, and there were variable opinions about the best way to approach any additional extensions.





Judge Bridges said there appear to be a distinct set of concerns in the family law area, and Attorney Harrison offered to draft proposed language for review by Judge Vincent, Judge Corpening, and others. Judge Vincent said she would hope there would be time to allow for input from the chief district court judges that handle a lot of domestic cases.

Judge Bridges asked Chief of Staff Stearns when she needs the Task Force's recommendation on this matter. Chief of Staff Stearns said the Chief Justice's biggest concern is that the current extension order expires on June 1, and she wants to give as much advance notice as possible to practitioners and court personnel. Stearns said she is mindful of the need to develop a thoughtful and considered recommendation, but the Chief Justice would like to be able to issue her next order by the middle of the next week.

Clerk Chinn-Gary said the elected clerks are supportive of moving forward on June 1. Clerk Chinn-Gary said there is going to be a lot of work for the clerks regardless of whether there are hard deadlines or rolling deadlines, and the clerks' offices will need to ask the legal community for patience either way. However, the offices are poised to do their best to resume processing work on June 1. Trial Court Coordinator Craig said the court managers support moving forward on June 1. To help prevent an influx at one time, Trial Court Coordinator Craig said one of her colleagues suggested staggered deadlines; for instance, all filings and acts originally required to be done between March 16 and 31 could be due on June 30, all filings and acts originally required to be done between April 1 and 15 could be due on July 15, and all filings and acts originally required to be done between April 16 and 30 could be due on a later date. Trial Court Coordinator Craig said the court managers are most concerned about minimizing confusion and calls seeking clarification of the Chief Justice's orders.

Clerk Johnson said the clerks' offices are not fully staffed and will not be fully staffed until after June 11 when the allowance for paid administrative leave expires. Clerk Johnson said court actors in every county need to work together to make sure there will be sufficient clerk staff to handle calendars. Clerk Johnson suggested that the Chief Justice continue to stress the need for attorneys and litigants to file as much as possible by mail and the need for courts to utilize remote hearings to the fullest extent possible. Clerk Johnson said court actors are going to face challenges with respect to providing sufficient space in courtrooms to allow for social distancing. Clerk Johnson reiterated that she feels comfortable with June 1 but that everyone needs to understand the clerks' offices will not be fully staffed. Clerk Johnson added that the clerks are opposed to different rolling deadlines because they think that will cause confusion and errors.

Clerk Johnson said the clerks believe that summary ejectments may need to be treated differently. Clerk Chinn-Gary said G.S. 42-28 requires clerks to issue summons and set court dates within seven days of a complaint being filed and, if someone files a complaint on June 1 on top of the current backlog, the clerks will not be able to meet that timeline. For the sake of clarity and uniformity, Clerk Chinn-Gary recommended an extension of that seven-day time period. She added that small clerks' offices think they could meet a 14-day time period, but larger offices like hers prefer to see that time frame extended to 60 days. Judge Bridges asked about foreclosures, and Clerk Johnson said the clerks did not provide





feedback specific to foreclosures. Clerk Chinn-Gary said the clerks' ability to handle foreclosures would be contingent on having courtrooms in which they can comply with social distancing practices.

Judge Bridges said he thought extending the filing deadline to one specific date might create an avalanche of work for the clerks, but they seem to be more concerned about the confusion and burden that could result from a series of rolling deadlines. Clerk Johnson agreed, and said the clerks feel better equipped to handle a large number of filings than a large number of phone calls and possible errors. Clerk Johnson added that a lot of clerks have been accepting filings all along. Clerk Chinn-Gary asked that the Chief Justice encourage the bar to mail in filings; she suggested that the clerks can use the postmark date as the date filed and avoid a large volume of in-person filings. Clerk Chinn-Gary reiterated the request that other court officials consult with the clerks as they are preparing calendars to make sure there will be adequate clerk staff to handle them.

Chief of Staff Stearns asked if the clerks would be concerned about different deadlines applicable to different practices areas, such as June 1 for summary ejectments, June 12 for estates, and July 31 for criminal cases. She asked whether they believe variable deadlines by case type would cause confusion. Clerk Johnson said the clerks would prefer that type of differentiation to having to determine rolling dates in one area of the law.

Attorney Keister said the NCADA members are aligned with the family law practitioners and do not think there needs to be an additional extension for civil filing deadlines. Attorney Keister said there is understanding that jury trials are going to be difficult, but civil litigators want to get their cases moving as much as possible. Attorney Keister said he will be encouraging NCADA members to file prior to the deadline, but there are concerns about discovery and depositions. He added that a lot of civil attorneys are working remotely from their support staff and said an allowance for electronic signatures would help attorneys submit more timely filings. Attorney Keister said he assumes the Chief Justice intended her extensions to include discovery, so written discovery responses will come due when the extension of time expires. He suggested that the next order allow for hearings and depositions to move forward if they can be done remotely or in a safe and socially distant manner. He asked whether depositions can be handled remotely now, or whether that would require consent of all parties. Attorney Keister added that there will be some court-imposed filing deadlines that attorneys should be able to address with the presiding judges and he hopes there will be deference to reasonable requests. Attorney McCabe agreed.

Trial Court Administrator Myers said she has received a lot of feedback from civil attorneys that is consistent with Attorney Keister's comments. Trial Court Administrator Myers said a lot of these issues can be addressed through local motions practice and by encouraging judges to utilize WebEx for remote hearings in emergent cases. SOG Professor Ann Anderson suggested that, in the interest of justice, it might be appropriate to extend SOLs in civil cases for self-represented litigants. Judge Sermons said most superior court judges do not think there needs to be an additional blanket extension, although SOLs are different because only the Chief Justice can extend them. Attorney McCabe said he does not think NCAJ's members would have a problem with extending SOLs.





Judge Bridges summarized the feedback received so far as follows:

1. In criminal cases, the recommendation is to further extend deadlines for all motions or other filings until July 31, 2020.
2. In civil cases, the recommendation is not to extend filing deadlines any further, with the exception of SOLs and statutes of repose being extended until July 31, 2020. As to other civil deadlines, such as pleadings and discovery responses, those deadlines should remain June 1 subject to the existing authority of local judges to grant extensions based on the showing required by law.
3. With respect to summary ejectments, the recommendation is to give clerks up to 60 days from the filing of any summary ejectment to complete the process of issuing any necessary summons and setting a hearing date, notwithstanding the seven-day limit in G.S. 42-28.

Trial Court Administrator Myers noted that Rule 2 of the General Rules of Practice requires civil calendars to be published no later than four weeks prior to the first week of court, which will not be possible if civil deadlines are not extended any further, and she asked whether that requirement could be shortened to two weeks. Judge Sermons said it will not be possible during this transition to comply with the four-week requirement. Trial Court Administrator Craig said it is her understanding that the business court prefers no additional extensions so that discovery can proceed and remote hearings can continue.

Chief of Staff Stearns noted that all of the Chief Justice's emergency directives expire every 30 days by statute, so she will need to revisit her orders approximately every three weeks. Judge Bridges asked the clerks to draft some proposed language about their concerns to include in the recommendation to the Chief Justice, and Clerk Johnson agreed to do so.

Judge Bridges said it sounds like the Task Force members had identified all of the areas that need to be addressed in its recommendation. Attorney Harrison moved to submit the recommendations as summarized by Judge Bridges. Attorney McCabe seconded the motion. Public Defender Harjo said she generally agrees unless something goes awry with the progression of the virus.

Judge Corpening said the Task Force agenda for next week will include a discussion of what June 1 will look like in courthouses across the state, including setting priorities for the most emergent case types, creative scheduling, and meeting safety concerns. Judge Corpening said this discussion had been about filing deadlines but it remains important to discuss what ramping back up will look like. At Judge Corpening's request, Mehta took a roll call vote. Fifteen Task Force members voted in favor of the motion, with Public Defender Harjo dissenting.

Judge Corpening asked the Task Force staff to draft a recommendation consistent with the discussion and to circulate it to the full Taskforce for review. Everyone agreed that the Task Force members can decide at that time if any additional email vote on the recommendation is necessary. Chief of Staff Stearns said the Chief Justice would like to enter her next order on deadline extensions by Monday so





that she can give advance notice to the field. Judge Corpening asked NCAOC Deputy Director Danielle Carman to circulate a draft as soon as possible.

### **Revised Task Force Working Group Assignments and Mission Statements**

Judge Corpening suggested that the Task Force use the remaining meeting time to refine the working groups, noting that he and Judge Bridges have had discussions since the first meeting about changing the composition somewhat:

1. The Best Safety Practices Working Group will be a standalone group that focuses on generating a list of questions about best safety practices for public health officials, obtaining answers, and making recommendations that are evidence-based and appropriate for the courts.
2. The Technology Working Group will also address innovations in court scheduling and operations.
3. The Virus Fatigue Working Group will remain the same.

Judge Corpening suggested adding the Honorable Charles Brown, District 19C Chief District Court Judge, to the Technology and Innovations Working Group. Trial Court Coordinator Craig, Attorney McCabe, and Attorney Keister asked to be added to that working group. Trial Court Administrator Myers said she could be removed from that group. Clerk Chinn-Gary asked that she be removed from that group, and that Johnston County Clerk Michelle Ball serve in lieu of her. Judge Bridges noted that he had asked District 15B Superior Court Judge Allen Baddour and District 5 Senior Resident Superior Court Judge Chuck Henry to serve. IDS Interim Director Whitney Fairbanks volunteered to serve as well. Carman noted that the Task Force Co-Chairs need to name a Chair for that working group.

Judge Vincent asked to be added to the Virus Fatigue Working Group. Judge Corpening asked any additional Task Force members to let Judge Bridges and him know if they want to be added to a working group.

The two Taskforce members who were unable to attend the first meeting—District Attorney Billy West and Attorney John McCabe—introduced themselves. NCAOC Safety and COOP Consultant Christine Villaverde noted that the Sheriff’s Association had designated Richmond County Sheriff James Clemmons to serve as a liaison to the Taskforce. Sheriff Clemmons introduced himself.

The meeting adjourned at 4:00 p.m. The next meeting will be held on May 13, 2020 at 2:00 p.m.

After the meeting, the Task Force members reviewed a series of draft written recommendations based on the discussion. Ultimately, fifteen Task Force members voted in favor of the written recommendations to the Chief Justice, with Trial Court Administrator Meyers dissenting due to concerns about recommendation #5.b.’s suggestion that clerks of superior court may rely on the postmark date when time-stamping mailed documents.

